

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 MARC D. GREENBAUM  
Supervising Deputy Attorney General  
3 SHAWN P. COOK  
Deputy Attorney General  
4 State Bar No. 117851  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-9954  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*

7  
8 **BEFORE THE**  
**BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 832-A

11 **ROY PAYTON**  
12 **6539 Firmament Ave.**  
13 **Van Nuys, CA 91406**  
**Civil Engineer License No. C 38610**

**A C C U S A T I O N**

14 Respondent.

15  
16 Complainant alleges:

17 **PARTIES**

18 1. David Brown (Complainant) brings this Accusation solely in his official capacity as  
19 the Executive Officer of the Board for Professional Engineers and Land Surveyors, Department  
20 of Consumer Affairs.

21 2. On or about September 5, 1984, the Board for Professional Engineers and Land  
22 Surveyors issued Civil Engineer License Number C 38610 to Roy Payton (Respondent). The  
23 Civil Engineer License was in full force and effect at all times relevant to the charges brought  
24 herein and will expire on March 31, 2011, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board for Professional Engineers and Land  
27 Surveyors (Board), Department of Consumer Affairs, under the authority of the following laws.  
28 All section references are to the Business and Professions Code unless otherwise indicated.

1           4.     Section 6731 provides:

2           “Civil engineering embraces the following studies or activities in connection with fixed  
3 works for irrigation, drainage, waterpower, water supply, flood control, inland waterways,  
4 harbors, municipal improvements, railroads, highways, tunnels, airports and airways, purification  
5 of water, sewerage, refuse disposal, foundations, grading, framed and homogeneous structures,  
6 buildings, or bridges:

7           (a) The economics of, the use and design of, materials of construction and the determination  
8 of their physical qualities.

9           (b) The supervision of the construction of engineering structures.

10          (c) The investigation of the laws, phenomena and forces of nature.

11          (d) Appraisals or valuations.

12          (e) The preparation or submission of designs, plans and specifications and engineering  
13 reports.

14          (f) Coordination of the work of professional, technical, or special consultants.

15          (g) Creation, preparation, or modification of electronic or computerized data in the  
16 performance of the activities described in subdivisions (a) through (f).

17          Civil engineering also includes city and regional planning insofar as any of the above  
18 features are concerned therein.

19          Civil engineers registered prior to January 1, 1982, shall be authorized to practice all land  
20 surveying as defined in Chapter 15 (commencing with Section 8700) of Division 3.”

21          5.     Section 6738, subdivisions (c), (a)(3) and (i), require in pertinent part that when  
22 fictitious names are used in the name of a civil engineering business, a current organization  
23 record form must be filed with the Board that identifies each of the licensees in the business.

24          6.     Section 6749 provides:

25          “(a) A professional engineer shall use a written contract when contracting to provide  
26 professional engineering services to a client pursuant to this chapter. The written contract shall  
27 be executed by the professional engineer and the client, or his or her representative, prior to the  
28 professional engineer commencing work, unless the client knowingly states in writing that work

1 may be commenced before the contract is executed . The written contract shall include, but not  
2 be limited to, all of the following:

3 (1) A description of the services to be provided to the client by the professional engineer.

4 (2) A description of any basis of compensation applicable to the contract, and the method of  
5 payment agreed upon by the parties.

6 (3) The name, address, and license or certificate number of the professional engineer, and  
7 the name and address of the client.

8 (4) A description of the procedure that the professional engineer and the client will use to  
9 accommodate additional services.

10 (5) A description of the procedure to be used by any party to terminate the contract.

11 (b) This section shall not apply to any of the following:

12 (1) Professional engineering services rendered by a professional engineer for which the  
13 client will not pay compensation.

14 (2) A professional engineer who has a current or prior contractual relationship with the  
15 client to provide engineering services, and that client has paid the professional engineer all of the  
16 fees that are due under the contract.

17 (3) If the client knowingly states in writing after full disclosure of this section that a  
18 contract which complies with the requirements of this section is not required.

19 (4) Professional engineering services rendered by a professional engineer to any of the  
20 following:

21 (A) A professional engineer licensed or registered under this chapter.

22 (B) A land surveyor licensed under Chapter 15 (commencing with Section 8700).

23 (C) An architect licensed under Chapter 3 (commencing with Section 5500).

24 (D) A contractor licensed under Chapter 9 (commencing with Section 7000).

25 (E) A geologist or a geophysicist licensed under Chapter 12.5 (commencing with Section  
26 7800).

1 (F) A manufacturing, mining, public utility, research and development, or other industrial  
2 corporation, if the services are provided in connection with or incidental to the products, systems,  
3 or services of that corporation or its affiliates.

4 (G) A public agency.

5 (c) "Written contract" as used in this section includes a contract that is in electronic form.

6 7. Section 6775 of the Code states:

7 "The board may receive and investigate complaints against registered professional  
8 engineers, and make findings thereon.

9 By a majority vote, the board may reprove, suspend for a period not to exceed two years, or  
10 revoke the certificate of any professional engineer registered under this chapter:

11 (c) Who has been found guilty by the board of negligence or incompetence in his or her  
12 practice.

13 . . .

14 (h) Who violates any provision of this chapter."

15 8. Title 16, California Code of Regulations section 415 states:

16 "A professional engineer or land surveyor licensed under the Code shall practice and  
17 perform engineering or land surveying work only in the field or fields in which he/she is by  
18 education and/or experience fully competent and proficient.

19 Nothing in this regulation shall be construed: (1) to prohibit a professional engineer from  
20 signing plans which include engineering work in areas other than that in which he/she is fully  
21 competent and proficient, if such work was performed by other engineers who were fully  
22 competent and proficient in such work; (2) to prohibit a professional engineer from performing  
23 engineering work or a land surveyor from performing land surveying work in areas which involve  
24 the application of new principles, techniques, ideas or technology; (3) to prohibit a professional  
25 engineer from supervising other engineers or a land surveyor from supervising other land  
26 surveyors who may respectively be performing engineering work or land surveying work in areas  
27 other than those in which the supervising professional engineer or supervising land surveyor is  
28 fully competent and proficient; and (4) to prohibit a professional engineer from signing plans

1 which include engineering work, portions of which were designed or required by any  
2 governmental agency.”

3 9. Title 16, California Code of Regulations section 463 states:

4 “(a) A professional engineer who is associated as the partner, member, officer, or employee  
5 in responsible charge of professional engineering services offered or performed by a firm,  
6 partnership, or corporation shall notify the Board within thirty (30) days of such association or  
7 termination of association on a form approved by the Board.

8 (b) A licensed land surveyor and/or civil engineer who practices or offers to practice land  
9 surveying, according to the provisions of Section 8729 of the Code, as a partner, member, or  
10 officer of a partnership, firm, or corporation shall advise the Board within thirty (30) days of such  
11 association or termination of association on a form approved by the Board.

12 (c) A licensed photogrammetric surveyor who is associated as a member, partner, officer, or  
13 employee in a firm, partnership, or corporation which offers or performs photogrammetric  
14 surveying services according to the provisions of Article 5.5 of the Professional Land Surveyors'  
15 Act shall notify the Board within thirty (30) days of such association or termination of association  
16 on a form approved by the Board.

17 (d) A firm which contains partners, members or officers as described above will be allowed  
18 six months following the death, disassociation, or retirement of a member, partner, or officer  
19 whose name the firm, partnership or corporation carried in its firm title to make a written request  
20 to the Board for an investigation pursuant to the requirements of Section 6738(e) of the Code. The  
21 Board will determine if such firm is eligible to continue use of its firm title without change.”

22 10. California Code of Regulations, Title 16, section 404, subd. (n), states:

23 “For the sole purpose of investigating complaints and making findings thereon under  
24 Sections 6775 and 8780 of the Code, "incompetence" as used in Sections 6775 and 8780 of the  
25 Code is defined as the lack of knowledge or ability in discharging professional obligations as a  
26 professional engineer or land surveyor.”

27 11. California Code of Regulations, Title 16, section 404, subd.(w), states:

28 “For the sole purpose of investigating complaints and making findings thereon under

1 Sections 6775 and 8780 of the Code, "negligence" as used in Sections 6775 and 8780 of the Code  
2 is defined as the failure of a licensee, in the practice of professional engineering or land  
3 surveying, to use the care ordinarily exercised in like cases by duly licensed professional  
4 engineers and land surveyors in good standing."

5 12. Section 125.3 of the Code provides, in pertinent part, that the board may request the  
6 administrative law judge to direct a licentiate found to have committed a violation or violations of  
7 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
8 enforcement of the case.

9 13. Section 118 of the Code states:

10 "(a) The withdrawal of an application for a license after it has been filed with a board in the  
11 department shall not, unless the board has consented in writing to such withdrawal, deprive the  
12 board of its authority to institute or continue a proceeding against the applicant for the denial of  
13 the license upon any ground provided by law or to enter an order denying the license upon any  
14 such ground.

15 "(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a  
16 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by  
17 order of a court of law, or its surrender without the written consent of the board, shall not, during  
18 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its  
19 authority to institute or continue a disciplinary proceeding against the licensee upon any ground  
20 provided by law or to enter an order suspending or revoking the license or otherwise taking  
21 disciplinary action against the licensee on any such ground.

22 "(c) As used in this section, 'board' includes an individual who is authorized by any  
23 provision of this code to issue, suspend, or revoke a license, and 'license' includes 'certificate,'  
24 'registration,' and 'permit.'"

#### 25 COST RECOVERY

26 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
27 administrative law judge to direct a licentiate found to have committed a violation or violations of  
28



1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
2 enforcement of the case.

3 **PROJECT 1:**

4 **2875 Devonport Rd., San Marino, CA 91108**

5 **FIRST CAUSE FOR DISCIPLINE**

6 (Negligence)

7 15. Respondent is subject to disciplinary action under section 6775 (c) of the  
8 Code and California Code of Regulations, Title 16, section 404, in that he failed to use the care  
9 ordinarily exercised in like cases by a duly licensed professional engineer in the practice of  
10 engineering. The circumstances are as follows:

11 16. In or about the first half of 2004, Respondent and Ricardo Urquidi of K-Consultants  
12 prepared design documents to obtain a building permit for the construction of a second story  
13 addition of approximately 522 square feet to an existing 2446 square foot house located at 2875  
14 Devonport Rd., San Marino, CA 91108 owned by Tomas Gutierrez (the "project").

15 17. K Consultants submitted a thirteen sheet set of structural drawings and a thirteen page  
16 set of structural calculations (collectively, the "design documents" or "plans") for the project to  
17 the permitting authority, the City of San Marino ("City").

18 18. VCA Code Group ("VCA"), the City's plan check consultant reviewed the documents  
19 submitted by K Consultants. Respondent signed and sealed the structural calculations on two  
20 sheets as the Engineer of Record ("EOR").

21 19. VCA recommended approval of the plans and permit issuance to the City. The City  
22 authorized Building Permit B00-084-828 (the "Permit") be issued for the project on or about  
23 August 8, 2004.

24 20. Following issuance of the Permit, Abe Contractors, (the "contractor") a general  
25 contractor hired by the project owner, raised issues regarding the structural design that  
26 Respondent participated in preparing and that he signed and sealed as EOR. The contractor  
27 engaged Antonio Luisoni ("Luisoni") a licensed structural engineer, to review the approved  
28 drawings and calculations.

1           21. Luisoni stated that he found "major mistakes" in the structural drawings and  
2 calculations certified by Respondent. Luisoni submitted a new or revised set of plans to the City  
3 and based thereon the City issued a new permit.

4           22. During the time of the allegations herein, Respondent provided engineering services  
5 under the namestyle K Consultants and Ricardo Urquidi; 2321 W. Olive Ave., Suite L; Burbank  
6 CA 91506. In Respondent's filed organizational record with the Board, he represented that he  
7 solicits engineering services under the namestyle "Payton Engineering" at 22543 Ventura Bl.  
8 Suite 227, Woodland Hills, CA 91364.

9           23. Respondent's proposed loading of two 25.5 foot spanning 6" x 14" hip beams onto a  
10 23 foot span 6" x 12" beam raises structural review questions and concerns. The analysis method  
11 and approach used by Respondent to specify Beam in his structural calculations is below the  
12 standard of care and does not demonstrate a rational and logical structural approach.

13           24. Respondent's structural drawings for the lateral loading of the project's second story  
14 addition where he elected to perform and submit an analysis to the permitting review authority is  
15 difficult to follow, overly simplistic, inconsistent and incomplete and falls below the standard of  
16 care that it be rational, clear and complete.

17           25. The structural analysis submitted by Respondent fails to reflect the complex nature of  
18 and design of the roof system for the project addition. Respondent's failure to reflect the  
19 geometric design and material selections in his structural analysis as depicted in his drawings is  
20 below the standard of care.

21           26. The analysis submitted by Respondent with respect to soil resistance bearings does  
22 not reflect a rational method of applying loads and providing for their resistances and is below the  
23 standard of care.

24           27. Respondent's structural submittal for the project is below the standard of care.  
25 Respondent's design is not "conventional light framed wood construction", and therefore, while  
26 he would have flexibility in structural geometry, material choices and force applications, the  
27 standard of care would require that the analysis conform to normal, rational methods, where  
28 standard details are replaced by custom details, standard tables are replaced by engineered



1 calculation, and standard wood framing is replaced by specific member design, with submittals to  
2 the City being correct and based upon a comprehensive and professional review. Respondent's  
3 submittals fall below that standard of care.

4 28. Respondent's engineering analysis and submitted calculations encompass non-  
5 standard practices, quality assurance oversights, illogical load analysis and incorrect or inaccurate  
6 methodology. Respondent misapplied formulization factors and failed to thoroughly review his  
7 analysis for correctness and logical conformity with scientific principles and engineering  
8 methods. Respondent's plans submitted to the City are below the standard of care for practice of  
9 professional engineering within the construction industry.

#### 10 SECOND CAUSE FOR DISCIPLINE

11 (Failure to Enter into Written Contract)

12 28. Respondent is subject to disciplinary action under section 6749 of the Code in that he  
13 failed to utilize a written contract, meeting the requirements of the section, prior to providing  
14 engineering services to his client.

#### 15 THIRD CAUSE FOR DISCIPLINE

16 (Failure to File Organizational Records)

17 29. Respondent is subject to disciplinary action under section 6738 subdivisions (c),  
18 (a)(3) and (i) (c) of the Code and section 6775, subd. (h), for violation of California Code of  
19 Regulations, Title 16, California Code of Regulations section 463, in that he failed to file the  
20 proper organizational records and to inform the Board of his association or employment by K  
21 Consultants.

#### 22 PROJECT 2:

23 25066 Mulholland Dr.; Calabasas, CA 91302

#### 24 FOURTH CAUSE FOR DISCIPLINE

25 (Negligence)

26 30. Respondent is subject to disciplinary action under section 6775 (c) of the  
27 Code and California Code of Regulations, Title 16, section 404, in that he failed to use the care  
28

1 ordinarily exercised in like cases by a duly licensed professional engineer in the practice of  
2 engineering. The circumstances are as follows:

3 31. In or about 1993, Respondent provided engineering services to Edward Betz (the  
4 "owner") for a project located at 25066 Mulholland Dr.; Calabasas, CA 91302 (the "project").  
5 Respondent prepared an "as built grading plan" that was submitted to the County of Los Angeles  
6 Building and Safety Dept. ("L.A. County") and to the California Coastal Commission ("Coastal  
7 Commission").

8 32. L.A. County approved an "as built grading plan" on or about November 17, 1993.  
9 Coastal Commission staff; however, recommended denial of a grading plan in or about June,  
10 2004. The denied grading plan is an "after the fact" plan expanding grading volumes for the  
11 building pad from 3500 cubic yards of cut to 6250 cubic yards of cut and 6246 cubic yards of fill.  
12 These quantities match the quantities on Respondent's "as built grading plan".

13 33. Complainant is informed and believes and alleges that the denial of the grading plan  
14 by the Coastal Commission restricted the owner from timely proceeding with grading of the  
15 project. Further, it would most likely require extensive modifications to the grading plan to  
16 obtain Coastal Commission approval and the owner might be assessed penalties for completing  
17 grading work without having secured approval.

18 34. Respondent and the owner had a verbal agreement for Respondent to obtain and  
19 provide the owner with approvals from the necessary regulatory agencies for a grading plan for  
20 the project as the Engineer of Record for the project with L.A. County and the Coastal  
21 Commission.

22 35. Respondent affirmed with L.A. County that either he and/or "De Filippo-Payton"  
23 were consultants for the project and affirmed that the project grading was done in conformance  
24 with approved plans.

25 36. Respondent was required to observe, notify and report on the status and acceptability  
26 of the project grading. The project grading did not conform to the original plans. "As built"  
27 plans were required, which Respondent prepared for L.A. County approval and permitting. The  
28

1 Coastal Commission is also an entity from which approval and permitting is required; however it  
2 was excluded from Respondent's "as built" plan process.

3 37. Respondent knew or should have known that he was required to obtain Coastal  
4 Commission approvals for the grading project. Respondent's failure to obtain approval from the  
5 Coastal Commission for his over-site work in the "as built" plan process constitutes professional  
6 conduct below the standard of care for a licensed professional engineer

7 FIFTH CAUSE FOR DISCIPLINE

8 (Failure to File Organizational Records)

9 38. Respondent is subject to disciplinary action under section 6738 subdivisions (c),  
10 (a)(3) and (i) (c) of the Code and section 6775, subd. (h), for violation of California Code of  
11 Regulations, Title 16, California Code of Regulations section 463, based on the following  
12 circumstances:

13 39. Respondent used the name "Payton Engineering Company" on his submitted "as  
14 built" grading plan and also used said name on his business card. Respondent failed to submit  
15 organizational records for this fictitious business name to the Board.

16 40. Respondent on forms he executed to L.A. County in conjunction with his undertaking  
17 to over-see and obtain approval for the "as built" grading plan process, represented an association  
18 as "De Filippo-Payton". Respondent failed to submit organizational records for this fictitious  
19 business name to the Board.

20 PRAYER

21 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
22 and that following the hearing, the Board for Professional Engineers and Land Surveyors issue a  
23 decision:

24 1. Revoking or suspending Civil Engineer License Number C 38610, issued to Roy  
25 Payton Roy Payton.

26 2. Ordering Roy Payton to pay the Board for Professional Engineers and Land  
27 Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant to  
28 Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: 8/28/09

Original Signed

DAVID BROWN

Executive Officer

Board for Professional Engineers and Land Surveyors

Department of Consumer Affairs

State of California

*Complainant*

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accusation.rtf